

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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|--------------------|---|-----------------------------|
| BERNARD HAMILTON, |) | No. C 06-6268 CW (PR) |
| |) | |
| Plaintiff, |) | ORDER OF SERVICE AND |
| |) | REFERRING CASE TO PRO SE |
| v. |) | PRISONER SETTLEMENT PROGRAM |
| |) | |
| |) | (Docket nos. 3, 4) |
| S. ADAMIK, ET AL., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

INTRODUCTION

Plaintiff Bernard Hamilton, a state prisoner currently incarcerated at San Quentin State Prison (SQSP), has filed this pro se civil rights action under 42 U.S.C. § 1983. Plaintiff has paid the full filing fee. Venue is proper in this district because the acts complained of occurred at SQSP, located in Marin County, which is within this judicial district. See 28 U.S.C. §§ 84(a), 1391(b).

BACKGROUND

On October 21, 2004, Plaintiff filed a prior civil rights action. See Hamilton v. Adamik, et al., No. C 04-4458 CW (PR). Upon initial review, the Court found cognizable Plaintiff's claims of (1) deliberate indifference to serious medical needs, in violation of the Eighth Amendment and (2) retaliation for filing grievances, in violation of the Fourteenth Amendment, against SQSP Physicians Williams and Donald Calvo; SQSP Sergeants Whitson and Lee; SQSP Correctional Officers Adamik, L. Shaeffer, and J. Nunez; SQSP Medical Technical Assistant (MTA) Lee, SQSP Acting Warden Jill

1 A. Brown and SQSP Appeals Coordinator W. Jeppeson.

2 On February 24, 2006, Defendants moved to dismiss Plaintiff's
3 claims in Case No. C 04-4458 CW (PR), alleging that they were
4 unexhausted because the pertinent administrative appeals were
5 initiated prior to the date the complaint was filed but were not
6 ruled upon at the final level of administrative review until after
7 Plaintiff filed suit.

8 In an Order dated August 11, 2006, the Court granted
9 Defendants' motion to dismiss the claims in Case No. C 04-4458 CW
10 (PR) for failure to exhaust administrative remedies.

11 On October 4, 2006, Plaintiff filed the present action
12 alleging the same allegations as his prior action. He alleges that
13 he has exhausted all available administrative remedies with respect
14 to each of his claims. In addition to Defendants Adamik, Whitson,
15 Nunez, Williams, Calvo, Shaeffer, Jepperson, Brown, R. Lee and T.
16 Lee, who were named in his prior action, Plaintiff also names the
17 following as Defendants: SQSP Lieutenant G. Fuller; SQSP Nurse
18 Barkley; and Chief of Inmate Appeals N. Grannis. Plaintiff seeks
19 declaratory and injunctive relief, as well as monetary damages.

20 Plaintiff has also filed a document entitled "Amendment and/or
21 Supplement to the Complaint" (docket no. 3), which the Court will
22 construe as a motion to amend the complaint. He moves to add a
23 claim against the following additional Defendants: SQSP Senior
24 Accounting Officer Larry Ward; SQSP Business Manager Terri McKay;
25 and SQSP Acting Warden Robert L. Ayers, for failing to provide
26 Plaintiff with a certified copy of the trust account statement to
27 supplement his motion for leave to proceed in forma pauperis in
28 2004. However, the Court finds that this claim is not cognizable.

1 Plaintiff's 602 inmate appeal regarding this claim was reviewed at
2 the first, second and Director's level, and each found that
3 Plaintiff did not have a right to receive a certified trust account
4 statement pursuant to SQSP's court filing process and procedure.
5 Instead, the SQSP trust office completes the trust withdrawal forms
6 and provides attachments, and then forwards the documents to the
7 SQSP Litigation Coordinator's office. The inmate's counselor then
8 provides the inmate with a non-certified copy of the trust account
9 statement. Because there is no established prison procedure for
10 providing inmates with certified copies of their trust account
11 statements, the Court DENIES Plaintiff's motion to amend (docket
12 no. 3) because he has failed to state a cognizable claim for relief
13 against the aforementioned Defendants.

14 Finally, Plaintiff asks the Court to refer this action to the
15 Pro Se Prisoner Settlement Program (docket no. 4).

16 STANDARD OF REVIEW

17 A federal court must conduct a preliminary screening in any
18 case in which a prisoner seeks redress from a governmental entity
19 or officer or employee of a governmental entity. 28 U.S.C.
20 § 1915A(a). In its review, the court must identify any cognizable
21 claims and dismiss any claims that are frivolous, malicious, fail
22 to state a claim upon which relief may be granted or seek monetary
23 relief from a defendant who is immune from such relief. Id.
24 § 1915A(b)(1), (2).

25 To state a claim under 42 U.S.C. § 1983, a plaintiff must
26 allege two essential elements: (1) that a right secured by the
27 Constitution or laws of the United States was violated, and
28 (2) that the alleged violation was committed by a person acting

1 under the color of state law. West v. Atkins, 487 U.S. 42, 48
2 (1988). "'[A] complaint should not be dismissed for failure to
3 state a claim unless it appears beyond doubt that the plaintiff can
4 prove no set of facts in support of his claim which would entitle
5 him to relief.'" Terracom v. Valley National Bank, 49 F.3d 555,
6 558 (9th Cir. 1995) (quoting Conley v. Gibson, 355 U.S. 41, 45-46
7 (1957)). Pro se pleadings must be liberally construed. Balistreri
8 v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

9 DISCUSSION

10 I. Legal Claims

11 A. Deliberate Indifference Claim

12 Deliberate indifference to serious medical needs violates the
13 Eighth Amendment's proscription against cruel and unusual
14 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin
15 v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other
16 grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136
17 (9th Cir. 1997) (en banc). A determination of "deliberate
18 indifference" involves an examination of two elements: the
19 seriousness of the prisoner's medical need and the nature of the
20 defendant's response to that need. Id. at 1059. A serious medical
21 need exists if the failure to treat a prisoner's condition could
22 result in further significant injury or the "unnecessary and wanton
23 infliction of pain." Id. (citing Estelle, 429 U.S. at 104). The
24 existence of an injury that a reasonable doctor or patient would
25 find important and worthy of comment or treatment; the presence of
26 a medical condition that significantly affects an individual's
27 daily activities; or the existence of chronic and substantial pain
28 are examples of indications that a prisoner has a serious need for

1 medical treatment. Id. at 1059-60 (citing Wood v. Housewright, 900
2 F.2d 1332, 1337-41 (9th Cir. 1990)). A prison employee is
3 deliberately indifferent if he or she knows that a prisoner faces a
4 substantial risk of serious harm and disregards that risk by
5 failing to take reasonable steps to abate it. Farmer v. Brennan,
6 511 U.S. 825, 837 (1994).

7 Because Plaintiff raises the same allegations as he did in his
8 prior action, the following summary of pertinent facts is taken
9 from the Court's Order granting Defendants' motion to dismiss in
10 Case No. 04-4458 CW (PR):

11 Plaintiff suffers from numerous serious medical
12 conditions and has been treated by SQSP doctors for over
13 twenty-three years. He has been treated for angina,
hypertension, diabetes and neuropathy. He also suffers from
obesity.

14 SQSP Staff Physician T. Martin, D.O. issued a medical
15 chrono in August, 2002 stating that it was medically
16 necessary for Plaintiff to receive heat-risk relief with ice
or a fan for the length of his stay. Plaintiff states that
17 he had no problems receiving ice in his cell on East Block
until August 10, 2004. Because Defendant Calvo, SQSP Health
18 Care Manager, denied renewal of his heat-risk chrono in May,
2004, Plaintiff claims that Defendants repeatedly refused to
19 provide him with ice even after he received a temporary
heat-risk chrono on August 18, 2004.

20 On more than one occasion after Defendants refused to
21 provide him with ice, Plaintiff claims that he experienced
22 severe symptoms of heat exhaustion, including nausea,
sweating, dizziness and increased blood pressure. He was
23 taken to the hospital for emergency treatment twice after
such reactions. Plaintiff filed numerous appeals in
response to these incidents.

24 Plaintiff alleges that it was medically necessary for
SQSP staff to comply with his heat-risk chronos, and that
25 Defendants' denial of these accommodations has exacerbated
the effects of the medications prescribed to treat or
26 alleviate Plaintiff's various medical conditions.

27 (Aug. 11, 2006 Order in Case No. 04-4458 CW (PR) at 2-3.)

28 Liberally construed, Plaintiff has stated a cognizable claim

1 for deliberate indifference to his serious medical needs against
2 Defendants Fuller, Calvo, Whitson, Adamik, Sergeant Lee, Nunez, MTA
3 Lee, Shaeffer, Brown, Jeppeson, Grannis and Barkley for failing to
4 provide the medically prescribed treatment for his condition.

5 B. Retaliation Claim

6 Plaintiff also claims that Defendants refused to honor his
7 medical chrono for ice and a fan in retaliation for filing prison
8 grievances.

9 Prisoners may not be retaliated against for exercising their
10 right of access to the courts, Schroeder v. McDonald, 55 F.3d 454,
11 461 (9th Cir. 1995), which extends to established prison grievance
12 procedures, Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995).

13 Liberally construed, Plaintiff has stated a cognizable
14 retaliation claim against Defendants Fuller, Calvo, Whitson,
15 Adamik, Sergeant Lee, Nunez, Williams, MTA Lee, Brown, Jeppeson and
16 Grannis.

17 C. Equal Protection Claim

18 A plaintiff alleging denial of equal protection under 42
19 U.S.C. § 1983 based on race or other suspect classification must
20 plead intentional unlawful discrimination or allege facts that are
21 at least susceptible of an inference of discriminatory intent.
22 Monteiro v. Tempe Union High School Dist., 158 F.3d 1022, 1026 (9th
23 Cir. 1998). To state a claim for relief, the plaintiff must allege
24 that the defendant state actor acted at least in part because of
25 plaintiff's membership in a protected class. Serrano v. Francis,
26 345 F.3d 1071, 1081-82 (9th Cir. 2003).

27 Plaintiff alleges that all Defendants, with the exception of
28 Defendant Sergeant Lee, violated his Fourteenth Amendment equal

1 protection rights by discriminating against him because he is
2 black. The Court finds that Plaintiff's allegations of racial
3 discrimination are conclusory and ambiguous. Thus, Plaintiff has
4 not stated a cognizable equal protection claim.

5 Accordingly, Plaintiff's equal protection claim against
6 Defendants Adamik, Whitson, Nunez, Williams, Calvo, Shweffe,
7 Jepperson, Brown, MTA Lee, Fuller, Barkley and Grannis is
8 DISMISSED.

9 II. Pro Se Prisoner Settlement Program

10 The Northern District of California has established a Pro Se
11 Prisoner Settlement Program. Certain prisoner civil rights cases
12 may be referred to a neutral magistrate judge for settlement
13 proceedings. The proceedings will consist of one or more
14 conferences as determined by Magistrate Judge Nandor Vadas. The
15 conferences shall be conducted at San Quentin State Prison with
16 Defendant(s) and/or the representative for Defendant(s) attending
17 by videoconferencing if they so choose.

18 Good cause appearing, Plaintiff's request for this action to
19 be referred to the Pro Se Prisoner Settlement Program (docket no.
20 4) is GRANTED, and the present case will be REFERRED to Magistrate
21 Judge Vadas for settlement proceedings pursuant to the Pro Se
22 Prisoner Settlement Program. The proceedings shall take place
23 within one-hundred twenty (120) days after the date of this Order.
24 Magistrate Judge Vadas shall coordinate a time and date for a
25 settlement proceeding with all interested parties and/or their
26 representatives and, within ten (10) days after the conclusion of
27 the settlement proceedings, file with the Court a report regarding
28 the settlement proceedings.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. Plaintiff's motion to amend his complaint (docket no. 3) is DENIED.

2. Plaintiff has stated a cognizable claim for deliberate indifference to his serious medical needs against Defendants Fuller, Calvo, Whitson, Adamik, Sergeant Lee, Nunez, MTA Lee, Shaeffer, Brown, Jeppeson, Grannis and Barkley.

3. Plaintiff has stated a cognizable retaliation claim against Defendants Fuller, Calvo, Whitson, Adamik, Sergeant Lee, Nunez, Williams, MTA Lee, Brown, Jeppeson and Grannis.

4. Plaintiff's equal protection claim Defendants Adamik, Whitson, Nunez, Williams, Calvo, Shaeffer, Jepperson, Brown, MTA Lee, Fuller, Barkley and Grannis is DISMISSED.

5. Plaintiff's request for this action to be referred to the Pro Se Prisoner Settlement Program (docket no. 4) is GRANTED. The Clerk of the Court shall provide a copy of the court documents that are not available electronically, including a copy of this Order, to Magistrate Judge Vadas in Eureka, California.

6. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint and all attachments thereto (docket no. 1) and a copy of this Order to: SQSP Lieutenant G. Fuller; SQSP Physicians Williams and Donald Calvo; SQSP Sergeants Whitson and Lee; SQSP Correctional Officers Adamik and J. Nunez; SQSP Medical Technical Assistant (MTA) Lee; SQSP L.

1 Shaeffer; SOSP Acting Warden Jill A. Brown; SOSP Appeals
2 Coordinator W. Jeppeson; Chief of Inmate Appeals N. Grannis; and
3 SOSP Nurse Barkley. The Clerk of the Court shall also mail a copy
4 of the complaint and a copy of this Order to the State Attorney
5 General's Office in San Francisco. Additionally, the Clerk shall
6 mail a copy of this Order to Plaintiff.

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8 7. Defendants are cautioned that Rule 4 of the Federal Rules
9 of Civil Procedure requires them to cooperate in saving unnecessary
10 costs of service of the summons and complaint. Pursuant to Rule 4,
11 if Defendants, after being notified of this action and asked by the
12 Court, on behalf of Plaintiff, to waive service of the summons,
13 fail to do so, they will be required to bear the cost of such
14 service unless good cause be shown for their failure to sign and
15 return the waiver form. If service is waived, this action will
16 proceed as if Defendants had been served on the date that the
17 waiver is filed, except that pursuant to Rule 12(a)(1)(B),
18 Defendants will not be required to serve and file an answer before
19 sixty (60) days from the date on which the request for waiver was
20 sent. (This allows a longer time to respond than would be required
21 if formal service of summons is necessary.) Defendants are asked
22 to read the statement set forth at the foot of the waiver form that
23 more completely describes the duties of the parties with regard to
24 waiver of service of the summons. If service is waived after the
25 date provided in the Notice but before Defendants have been
26 personally served, the Answer shall be due sixty (60) days from the
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1 date on which the request for waiver was sent or twenty (20) days
2 from the date the waiver form is filed, whichever is later.

3 8. Defendants shall answer the complaint in accordance with
4 the Federal Rules of Civil Procedure. The following briefing
5 schedule shall govern dispositive motions in this action:

6 a. No later than ninety (90) days from the date their
7 answer is due, Defendants shall file a motion for summary judgment
8 or other dispositive motion. The motion shall be supported by
9 adequate factual documentation and shall conform in all respects to
10 Federal Rule of Civil Procedure 56. If Defendants are of the
11 opinion that this case cannot be resolved by summary judgment, they
12 shall so inform the Court prior to the date the summary judgment
13 motion is due. All papers filed with the Court shall be promptly
14 served on Plaintiff.

15 b. Plaintiff's opposition to the dispositive motion
16 shall be filed with the Court and served on Defendants no later
17 than sixty (60) days after the date on which Defendants' motion is
18 filed. The Ninth Circuit has held that the following notice should
19 be given to pro se plaintiffs facing a summary judgment motion:
20

21 The defendants have made a motion for summary
22 judgment by which they seek to have your case dismissed.
23 A motion for summary judgment under Rule 56 of the
24 Federal Rules of Civil Procedure will, if granted, end
25 your case.

26 Rule 56 tells you what you must do in order to
27 oppose a motion for summary judgment. Generally, summary
28 judgment must be granted when there is no genuine issue
of material fact -- that is, if there is no real dispute
about any fact that would affect the result of your case,
the party who asked for summary judgment is entitled to

1 judgment as a matter of law, which will end your case.
2 When a party you are suing makes a motion for summary
3 judgment that is properly supported by declarations (or
4 other sworn testimony), you cannot simply rely on what
5 your complaint says. Instead, you must set out specific
6 facts in declarations, depositions, answers to
7 interrogatories, or authenticated documents, as provided
8 in Rule 56(e), that contradict the facts shown in the
9 defendant's declarations and documents and show that
there is a genuine issue of material fact for trial. If
you do not submit your own evidence in opposition,
summary judgment, if appropriate, may be entered against
you. If summary judgment is granted [in favor of the
defendants], your case will be dismissed and there will
be no trial.

10 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en
11 banc).

12 Plaintiff is advised to read Rule 56 of the Federal Rules of
13 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
14 (party opposing summary judgment must come forward with evidence
15 showing triable issues of material fact on every essential element
16 of his claim). Plaintiff is cautioned that because he bears the
17 burden of proving his allegations in this case, he must be prepared
18 to produce evidence in support of those allegations when he files
19 his opposition to Defendants' dispositive motion. Such evidence
20 may include sworn declarations from himself and other witnesses to
21 the incident, and copies of documents authenticated by sworn
22 declaration. Plaintiff will not be able to avoid summary judgment
23 simply by repeating the allegations of his complaint.

24 c. If Defendants wish to file a reply brief, they shall
25 do so no later than thirty (30) days after the date Plaintiff's
26 opposition is filed.
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1 d. The motion shall be deemed submitted as of the date
2 the reply brief is due. No hearing will be held on the motion
3 unless the Court so orders at a later date.

4 9. Discovery may be taken in this action in accordance with
5 the Federal Rules of Civil Procedure. Leave of the Court pursuant
6 to Rule 30(a)(2) is hereby granted to Defendants to depose
7 Plaintiff and any other necessary witnesses confined in prison.
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9 10. All communications by Plaintiff with the Court must be
10 served on Defendants, or Defendants' counsel once counsel has been
11 designated, by mailing a true copy of the document to Defendants or
12 Defendants' counsel.

13 11. It is Plaintiff's responsibility to prosecute this case.
14 Plaintiff must keep the Court informed of any change of address and
15 must comply with the Court's orders in a timely fashion
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17 12. Extensions of time are not favored, though reasonable
18 extensions will be granted. Any motion for an extension of time
19 must be filed no later than fifteen (15) days prior to the deadline
20 sought to be extended.

21 13. This Order terminates Docket nos. 3 and 4.

22 IT IS SO ORDERED.

23 DATED: 9/24/07



24 CLAUDIA WILKEN
25 United States District Judge
26
27
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BERNARD HAMILTON,

Case Number: CV06-06268 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

OFFICER ADAMIK et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 24, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Bernard Hamilton C-27300
San Quentin State Prison
San Quentin, CA 94964

Dated: September 24, 2007

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California